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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,089	06/29/2005	Shuhei Kurata	P1347US	2298
1218	7590	06/23/2009		
CASELLA & HESPOS 274 MADISON AVENUE NEW YORK, NY 10016			EXAMINER QUINN, RICHARD LEE	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			06/23/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/541,089

**Applicant(s)**

KURATA, SHUHEI

**Examiner**

RICHALE L. QUINN

**Art Unit**

3765

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 11 - 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11 - 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/29/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

The amendment filed on 12/3/2008 has been fully considered. Claims 20–and 21 were added. Claim 3 is amended. Claims 7 – 10 are cancelled. Claims 1 – 6 and 8 – 21 are currently pending.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1- 6 and 11 - 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kielpikowski et al. (US 4,842,596). The device of Kielpikowski et al. discloses a wearing article, comprising a main body including a front part (28), a back part (30), and a crotch part (16) coupling the front and back parts (Figure 1). The main body comprises a pair of waist edges (13, 14) and a pair of leg edges (18) opposed to each other. Shirring (Column 9, line 25) is formed in a substantially widthwise middle portion of the crotch part of the main body as to shorten the space between the front and back parts (at 94) by the shrinking force of an elastic member. The device is silent to the ratio between the length of the crotch portion and the length of the main body between the waist edges; however, it can be clearly shown in the drawings that the length between the waist edges is 2 to 15 times greater in length than the crotch portion (94). The device of Kielpikowski et al. is a trunk bottom and the ratio between the crotch

and the waist edges allows for the desired shape of a trunk article to form with the body. The shirring is made from folds (Column 9, line 25) in the substantially widthwise middle portion of the crotch part (94) of the main body to shorten the substantially widthwise middle portion in a direction coupling the front and back part and by retaining the wavy shape (Figure 2) of the substantially widthwise middle portion. The shirring is formed by the shrinking force of an elastic member (6) for crotch attached to the substantially widthwise middle portion of the crotch part (at 94) of the main body under a stretched state (Column 24 – 25) in a direction coupling the front and back parts. Elastic members (102) for legs are attached along the leg edges under a stretched state (Column 10, lines 30 – 33). An absorbent (38) is attached to the main body. A gore is formed at the crotch part by the shirring (see folds near reference character 94) when the article is worn. The gore formed by the shirring is defined substantially at the widthwise middle portion of the crotch part and extends up towards the wearer (See Figure 2). The elastic member (102) has a widthwise dimension less than the widthwise dimensions of the crotch part as measured between the respective leg edges (see area between reference characters 96, 96).

***Response to Arguments***

3. Applicant's arguments filed 12/3/2008 have been fully considered but they are not persuasive.
4. Applicant submits that the device of Kielpikowski et al. fails to teach shirring in the widthwise middle direction to shorten a space between the front and back part. It is the position of the examiner that the device of Kielpikowski et al. discloses a widthwise

middle portion having shirring (See Figure 2, the folded, wavy area between reference characters 96). The length of the device is shortened in across the widthwise direction decreasing the length between the front and back parts. The device of Kielpikowski et al. meets the limitations recited by applicant when interpreted in the broadest reasonable sense.

5. Applicant further argues that the device of Kielpikowski teaches away from the claimed invention since the device of Kielpikowski, according to the applicant, shows not structure for providing structure to shorten the widthwise middle portion. The device of Kielpikowski discloses structures (96) on each side of the crotch portions that allow for shirring across the widthwise middle portion of the crotch. The length of the crotch is shortened across its entire widthwise direction since the material is gathered (shirred) to provide stretch. The device of Kielpikowski meets the limitations recited by applicant when interpreted in the broadest reasonable sense.

6. The device of Kielpikowski does not specifically recite the relative dimensions of the claimed apparatus. However, it is clear from the drawings that the dimensions would fall in to the ratio of 1: 2 to 1 : 15 as recited by applicant. Moreover, it would be obvious to a person having ordinary skill in the art at the time the invention was made to use the claimed ration as found through routine experimentation for best fit of the wearer.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHALE L. QUINN whose telephone number is (571)272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
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